

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 4 Compliance evaluation

Florida is well-prepared to address the compliance and enforcement responsibilities of the Section 404 program

Commenter (0223) expressed support for Florida's assumption of the Section 404 responsibilities, insisting that Florida meets the legal requirements under Section 233.41 and is "well-prepared to address the compliance and enforcement responsibilities of the program." This commenter noted that FDEP already has proven compliance and enforcement protocols in place as it has been enforcing Florida's dredge and fill regulations since the early 1970s. This commenter also remarked that Florida's legislature has "recently instituted measures that will enhance Florida's compliance and enforcement efforts."

FDEP has not met its responsibilities for the current programs and thus cannot be expected to ensure compliance with Section 404 program

Commenters (0346, 0386) expressed opposition to Florida's assumption of the Section 404 responsibilities, insisting that FDEP could not be expected to ensure compliance with new Section 404 permits, because it has not met its responsibilities for the programs already under its jurisdiction. Commenter (0346) pointed out that, "last year, only 65% of the FDEP-regulated facilities inspected by the agency were actually in compliance with the terms of their authorizations." This commenter (0346) provided data from the public record (EPA-HQ-OW-2018-0640-0346) to support its claim, observing that FDEP took action against only 12.4% of the cases on noncompliance. Commenter (0386) observed that "FDEP's own performance audits and employee testing show that it has failed in many respects to effectively administer its existing ERP Program" and "show FDEP's consistent inability to properly review permit applications and monitor and enforce issued permits." This commenter (0386) also provided data (EPA-HQ-OW-2018-0640-0386) from public records indicating that "audits of compliance and enforcement activities for FDEP's existing ERP program" were "littered with examples of inadequate documentation, assessment of insufficient or inaccurate penalties, [and] requiring inappropriate or insufficient corrective actions."